

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**BUILDING CODE APPEALS BOARD
DOCKET NO.: 11-1029**

Niles Sutphin,
Appellant

v.

Douglas Wohn,
Appellees

BOARD'S RULING ON APPEAL

Introduction

This matter came before the State Building Code Appeals Board ("Board") on appellant's appeal filed pursuant to G.L. c.143, §100 and 780 CMR 122.1. In accordance with 780 CMR 122.3 the appellant petitioned the Board to make a determination based on the Seventh Edition of the Massachusetts State Building Code ("Code"). For the following reasons, the appellant will be granted a variance from the parking requirements of 780 CMR 508.4 and stairway construction requirements of 780 CMR 1009.5.

The appellant requested that the Board grant a variance from the Code's parking and stairway construction requirements and grant a compliance alternative as proposed for an additional 5/8 inch type X sheetrock under the stairway. Niles Sutphin and Ryan Connelly appeared on behalf of the appellant. All witnesses were duly sworn.

Procedural History

The Board convened a public hearing on August 16, 2011, in accordance with G.L. c. 30A, §§10 & 11; G.L. c. 143, §100; 801 CMR 1.02; and 780 CMR 122.3. All interested parties were provided with an opportunity to testify and present evidence to the Board.

Findings of Fact

The Board bases the following findings upon the testimony presented at the hearing. There is substantial evidence to support the following findings:

1. The property at issue is located at 9 North Margin Street, Boston, MA 02113.
2. The issue in the case is related to the parking and stairway construction requirements of 780 CMR 508.4 and 780 CMR 1009.5 respectively.

3. The subject property is a new construction for which a permit was obtained in 2010 based on the 7th edition of the Code.
4. Floors one and two of the subject property are 1A construction and floors three through six are 5A construction.
5. The subject property has two means of egress stairways built of wood strainers from the ground floor to the first floor and the first floor to the second floor.
6. The wooden stairways are built out of fire retardant lumber and both the risers and the treads are constructed of fire retardant lumber.
7. The underneath side of the wooden stairways is treated with two layers of 5/8 inch type X sheetrock.
8. The walls of the stairs are 2-hour fire rated.
9. The building is fully sprinklered.
10. Construction on the building has been completed but occupancy has not yet been granted.
11. All issues with respect to zoning have been resolved with the City of Boston.

Analysis

A. Jurisdiction of the Board

There is no question that the Board has jurisdiction to hear this case. The governing statute provides that:

Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act by any state or local agency or any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules and regulations, except any specialized codes as described in section ninety-six, may within forty-five days after the service of notice thereof appeal from such interpretation, order, requirement, direction, or failure to act to the appeals board. G.L. c.143 §100.

The issues giving rise to this matter directly implicate provisions of the Code. As such, this Board has jurisdiction to decide this case pursuant to G.L. c. 143, §100.

B. State Building Code requirements

The issues in this case are whether the Board's decision should be based on the 7th or 8th edition of the Code and whether the appellant shall be granted a variance from the parking and stairway construction requirements of 780 CMR 508.4 and 780 CMR 1009.5. On the issue of which Code to apply, the appellant testified that the permit was issued in 2010 under the 7th edition of the Code and that the building was completed under the 7th edition of the Code. The appellant further testified that construction has been completed but that the permit is still active as occupancy has not yet been granted. On the issue of the parking and stairway construction requirements, the appellant testified that the lower portion of the building is type 1 and is thus only permitted to contain wood in certain areas. The appellant testified that the wooden stairways are built of fire retardant lumber and that the underside of the stairways is treated with two layers of 5/8 inch sheetrock. The appellant proposed a compliance alternative under which it would add an additional layer of 1-hour fire rated sheetrock underneath each stair, which would result in the stairways having three layers of 5/8 inch sheetrock.

Conclusion

A motion was made by Jacob Nunnemacher and seconded by Alexander MacLeod to apply the 7th edition of the Code and to grant appellant's compliance alternative to the parking and stairway construction requirements of 780 CMR 508.4 and 780 CMR 1009.5 whereby the appellant will add an additional layer of 1-hour rated sheetrock underneath each stair. The motion passed. The appellant's request for compliance alternative is hereby **granted**.



Alexander MacLeod

Jacob Nunnemacher

Doug Semple

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to Superior Court in accordance with G.L. c.30A, §14 within 30 days of receipt of this decision.

DATED: November 9, 2011